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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11
12 Case No. **2010- 446**

13 In the Matter of the Accusation Against:

14 DEBORAH SUE TATE
965 E. Vista Chino Drive, Apt. 6
Palm Springs, CA 92262

A C C U S A T I O N

15 Registered Nurse License No. 412620

16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs.

24 2. On or about May 31, 1987, the Board of Registered Nursing issued Registered Nurse
25 License Number 412620 to Deborah Sue Tate (Respondent). The Registered Nurse License was
26 in full force and effect at all times relevant to the charges brought herein and will expire on April
27 30, 2011, unless renewed.
28

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on a license.

6. Section 2811(b) of the Code provides, in part, that each license not renewed shall expire but may within a period of eight years thereafter be reinstated upon payment of the biennial renewal fee and penalty fee and upon submission of proof of the applicant's qualifications.

STATUTORY PROVISIONS

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

1 As used in this section, "license" includes "certificate," "permit,"
2 "authority," and "registration."

3 9. Section 2761 of the Code states:

4 The board may take disciplinary action against a certified or licensed nurse
5 or deny an application for a certificate or license for any of the following:

6 (a) Unprofessional conduct, which includes, but is not limited to, the
7 following:

8

9 (f) Conviction of a felony or of any offense substantially related to the
10 qualifications, functions, and duties of a registered nurse, in which event the record
11 of the conviction shall be conclusive evidence thereof.

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13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the
15 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for
16 a person licensed under this chapter to do any of the following:

17

18 (b) Use any controlled substance as defined in Division 10 (commencing
19 with Section 11000) of the Health and Safety Code, or any dangerous drug or
20 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
21 or in a manner dangerous or injurious to himself or herself, any other person, or
the public or to the extent that such use impairs his or her ability to conduct with
safety to the public the practice authorized by his or her license.

22 (c) Be convicted of a criminal offense involving the prescription,
23 consumption, or self-administration of any of the substances described in
24 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
25 record pertaining to, the substances described in subdivision (a) of this section, in
which event the record of the conviction is conclusive evidence thereof.

26 11. Section 482 of the Code states:

27 Each board under the provisions of this code shall develop criteria to
28 evaluate the rehabilitation of a person when:

1 (a) Considering the denial of a license by the board under Section 480; or

2 (b) Considering suspension or revocation of a license under Section 490.

3 Each board shall take into account all competent evidence of rehabilitation
4 furnished by the applicant or licensee.

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6 **REGULATORY PROVISIONS**

7 12. California Code of Regulations, title 16, section 1444, states:

8 A conviction or act shall be considered to be substantially related to the
9 qualifications, functions or duties of a registered nurse if to a substantial degree it
10 evidences the present or potential unfitness of a registered nurse to practice in a
11 manner consistent with the public health, safety, or welfare. Such convictions or
acts shall include but not be limited to the following:

12 (a) Assaultive or abusive conduct including, but not limited to, those
13 violations listed in subdivision (d) of Penal Code Section 11160.

14 (b) Failure to comply with any mandatory reporting requirements.

15 (c) Theft, dishonesty, fraud, or deceit.

16 (d) Any conviction or act subject to an order of registration pursuant to
17 Section 290 of the Penal Code.

18 13. California Code of Regulations, title 16, section 1445 states:

19

20 (b) When considering the suspension or revocation of a license on the
21 grounds that a registered nurse has been convicted of a crime, the board, in
22 evaluating the rehabilitation of such person and his/her eligibility for a license will
consider the following criteria

23 (1) Nature and severity of the act(s) or offense(s).

24 (2) Total criminal record.

25 (3) The time that has elapsed since commission of the act(s) or offense(s).

26 (4) Whether the license has complied with any terms of parole, probation,
27 restitution or any other sanctions lawfully imposed against the licensee.
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1 (5) If applicable, evidence of expungement proceedings pursuant to
Section 1203.4 of the Penal Code.

2 (6) Evidence, if any, of rehabilitation submitted by the licensee.

3 **COST RECOVERY**

4
5 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licensee found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 **FIRST CAUSE FOR DISCIPLINE**

10 (September 15, 2008 Conviction for DUI and Hit and Run on March 9, 2008)

11 15. Respondent is subject to disciplinary action under sections 490 and 2761(f) of the
12 Code in that she was convicted of a crime that is substantially related to the qualifications,
13 functions, and duties of a registered nurse. The circumstances are as follows:

14 a. On or about September 15, 2008, in a criminal proceeding entitled *People*
15 *of the State of California v. Deborah Sue Tate*, in the Santa Clara County Superior Court, case
16 number BB833013, Respondent entered a plea of guilty to violation of Vehicle Code section
17 23152(a), driving under the influence of alcohol, Vehicle Code section 23152(b), driving with a
18 blood alcohol level of .08 or more, Vehicle Code section 12500(a), driving while unlicensed, and
19 Vehicle Code section 20002(a), hit and run causing property damage.

20 b. As a result of the conviction, Respondent was sentenced to 20 days in
21 custody, three years probation, and ordered to pay all fines and fees, among other terms.

22 c. The facts that led to the conviction were that on or about March 9, 2008,
23 Respondent was driving on the wrong side of Moraga Drive in the City of Mountain View, when
24 she collided with a parked vehicle. The force of the collision caused the parked vehicle to back
25 into and strike another parked vehicle. Both of the parked vehicles sustained damage.
26 Respondent then reversed her vehicle and continued into the apartment complex down the street
27 where she parked and stumbled towards her apartment. Officers from the Mountain View Police
28 Department were called later and located Respondent sitting on a chair in the dining room area in

1 the apartment. Respondent had red and glossy eyes, a strong odor of an alcoholic beverage,
2 slurred speech, and appeared very sleepy and confused. Respondent stated, "I'm scared, I didn't
3 want to stay." She admitted to consuming five white Russians at a party located at a bar.
4 Respondent admitted that she knew she was intoxicated when she left the bar but that she could
5 not remember what happened on the way home. She admitted that she hit something but stated
6 that she did not know what she hit. Because Respondent appeared highly intoxicated and had
7 trouble speaking, the officers did not perform field sobriety tests. After being arrested for driving
8 under the influence, Respondent's blood was taken and it was determined that she had a blood
9 alcohol content of .38% by weight.

10 SECOND CAUSE FOR DISCIPLINE

11 (Use of Alcohol in a Manner Dangerous to Self or Others)

12 16. Respondent is subject to disciplinary action under section 2762(b) of the Code in
13 that on or about March 9, 2008, Respondent used alcohol to an extent as to be dangerous to
14 herself or others, as set forth in paragraph 15, above, which is incorporated herein by reference.

15 THIRD CAUSE FOR DISCIPLINE

16 (Unprofessional Conduct – Alcohol Related Conviction)

17 17. Respondent is subject to disciplinary action under 2762(c) of the Code in that on
18 or about September 15, 2008, Respondent was convicted of a criminal offense involving alcohol,
19 as set forth in paragraph 15 above, which is incorporated herein by reference.

20 PAYER

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Board of Registered Nursing issue a decision:

23 1. Revoking or suspending Registered Nurse License Number 412620, issued to
24 Deborah Sue Tate.

25 2. Ordering Deborah Sue Tate to pay the Board of Registered Nursing the reasonable
26 costs of the investigation and enforcement of this case, pursuant to Business and Professions
27 Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED:

3/18/10

Louise R. Bailey

LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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